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MSHA V. OZARK-MAHONING
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FMSHRC-WDC
FEB 28, 1986

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

v. Docket No. LAKE 84-96-M

OZARK-MAHONING COMPANY

BEFORE: Ford, Chairman; Backley, Doyle, Lastowka and Nelson,
Commissioners

DECISION

BY THE COMMISSION:

This civil penalty proceeding arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (1982) (the "Mine Act"), and raises two issues: (1) whether Ozark-Mahoning Company ("Ozark-Mahoning") violated 30 C.F.R. § 57.15-4, a mandatory safety standard requiring the use of safety glasses or other suitable eye protective devices; 1/ and, if so, (2) whether the violation was "significant and substantial" within the meaning of section 104(d)(1) of the Mine Act, 30 U.S.C. § 814(d)(1). Following a hearing on the merits, a Commission administrative law judge found that Ozark-Mahoning violated the standard and that the violation was significant and substantial. The judge imposed a civil penalty of \$350. 7 FMSHRC 1050 (July 1985)(ALJ). For the following reasons, we affirm the judge's decision.

1/ 30 C.F.R. § 57.15-4 states:

All persons shall wear safety glasses, goggles, or face shields or other suitable protective devices when in or around an area of a mine or plant where

a hazard exists which could cause injury to unprotected eyes (emphasis added).

30 C.F.R. § 57.15-4 was recodified without change in 1985 as
30 C.F.R. § 57.15004. 50 Fed. Reg. 4048, 4116 (January 29, 1985).

Ozark-Mahoning operates the Denton Mine, an underground fluorspar mine located in Hardin County, Illinois. On May 24, 1984, Department of Labor Mine Safety and Health Administration inspector, George LaLumondiere, observed miners, Dennis Darnell and Wendell Hicks, "collaring" drill holes with a jackleg percussion drill. 2/

Because the miners were drilling without eye protection and rock fragments were flying off the mining face, Inspector LaLumondiere issued a citation alleging a violation of 30 C.F.R. § 57.15-4. The inspector also found that the violation was significant and substantial. Immediately after receiving the citation, the mine superintendent obtained safety glasses for both miners and instructed them to wear the glasses while drilling.

The judge found that Ozark-Mahoning violated section 57.15-4 based upon undisputed testimony that the two miners were "collaring drill holes ... and drilling without wearing safety glasses or other eye protection" and that "rock fragments and chips fly out from the face while drilling and particularly while collaring holes." 7 FMSHRC at 1051. We conclude that substantial evidence of record supports the judge's finding. The miners admitted that they were not wearing safety glasses while drilling on the morning the inspector issued the citation. Also, Ozark-Mahoning did not dispute the testimony of the inspector that the process of collaring drill holes causes rock chips and fragments to fly out from the face posing a danger to the drillers' eyes and that many such eye injuries have been reported. In fact, Darnell, testified that "It is not that uncommon to get a piece in your eye every now and then when you're drilling." Tr. 48. Darnell added, "If it's anything you can't get out, we go to the lunchroom ... and we've got a bottle of solution there that we wash our eyes out and go back to work." Tr. 58. The testimony of the inspector and Darnell establishes that a violation of section 57.15-4 occurred.

In addition to challenging the judge's finding of a violation on substantial evidence grounds, Ozark-Mahoning contends that the cited standard is unenforceably vague. Ozark-Mahoning argues that because the standard does not specifically require the use of eye protection when drilling, it is not clear to the operator whether the standard is applicable when drill holes are collared. We find no merit in this argument. Section 57.15-4 is the type of safety standard that is drafted in general terms in order to be broadly adaptable to the myriad circumstances in a mine. Kerr-McGee Corp., 3 FMSHRC 2496, 2497 (November 1981). Such a standard is not

unenforceably vague when a reasonably prudent person, familiar with the mining industry and protective purpose of the standard would recognize the hazardous condition which the standard seeks to prevent. U.S. Steel Corp., 6 FMSHRC 1908, 1910 (August 1984); U.S Steel Corp., 5 FMSHRC 3, 5 (January 1983); Alabama By-Products Corp., 4 FMSHRC 2128, 2129 (December 1982). Therefore, the pertinent inquiry here is whether

2/ "Collaring a hole" is explained as: "The formation of the front end of a drill hole, or the collar, which is the preliminary step in drilling to cause the drill bit to engage in the rock." Bureau of Mines, U.S. Department of Interior, A Dictionary of Mining, Mineral, and Related Terms 234 (1968).

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a reasonably prudent person, familiar with the mining industry, would have recognized the existence of the hazard to the drillers' eyes while collaring drill holes.

Given the record evidence of the presence of a hazard to the drillers' eyes attested to by the inspector and Ozark-Mahoning's driller, we hold that a reasonably prudent person familiar with the industry would recognize the hazard. Therefore, the standard is applicable to the cited condition and the vagueness challenge is rejected.

Ozark-Mahoning also contests the judge's "significant and substantial" finding. It contends that the Secretary failed to prove that there was a reasonable likelihood that if an injury occurred it would be reasonably serious. We disagree.

A "significant and substantial" violation is described in section 104(d)(1) of the Mine Act as a violation "of such nature as could significantly and substantially contribute to the cause and effect of a coal or other mine safety or health hazard." 30 U.S.C. § 814(d)(1). A violation is properly designated significant and substantial "if, based upon the particular facts surrounding the violation there exists a reasonable likelihood that the hazard contributed to will result in an injury or illness of a reasonably serious nature." Cement Division, National Gypsum Co., 3 FMSHRC 822, 825 (April 1981).

In this case, the inspector testified that he had suffered a "bad cut" on his right eye while collaring a drill hole without safety glasses and that numerous eye injuries of this type are reported. Moreover, it is obvious that whenever foreign objects are propelled into the eye there is a reasonable likelihood of loss or impairment of vision as well as injury. The fact that the driller has so far avoided serious injury is fortunate, but not determinative. Therefore, we conclude that the judge's significant and substantial finding must be affirmed.

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Accordingly, for the foregoing reasons, the decision of the administrative law judge is affirmed.

Ford B. Ford, Chairman

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner

James A. Lastowka, Commissioner

L. Clair Nelson, Commissioner

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